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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SAINT SURIN, JACQUES M

ART UNIT PAPER NUMBER

2856

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/090,006

Applicant(s)

DE BAERDEMAEKER ET AL.

Examiner

Jacques M Saint-Surin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/13/03, 07/12/02, 03/05/02 and 05/13/02.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-13 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8, 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

1. Claim 4 is objected to because of the following informalities: typographical and grammatical errors. The word "road" recited in claim 4, line 2 appears to be a typographical error and should be replaced with "rod" to be consistent with the previously recited "hammer rod". The word "applies" should be replaced with --applied-- . Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schouenborg (US Patent 5,131,274) in view of Bliss (US Patent 3,067,605).

Regarding claim 1, Schouenborg discloses a device (a probe of a hard tube or rod-shaped, see: Fig. 2) for determining vibration characteristics of vibrated, generally round, substantially ellipsoid articles, such as eggs, comprising: an elastic hammer (elastically swung probe suspended in a holder 7, see: col. 3, lines 30-31), for tapping and thereby acoustically vibrating such article (egg), a handle driving element (glass tube 6, see: Fig. 2 and col. 5, lines 30-31) for reciprocating the hammer (holder 7) generally in a plane around an axis in the handle (6), a microphone (transducer 17 or microphone 117, see: col. 5, line 31 and col. 7, lines 26-27) arranged to and directed to

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the article (egg 1), for picking up acoustic vibrations generated by the article (1), and a signal processing means (electronic device 22, see: col. 5, line 44) for processing the signals picked up by the microphone (transducer 17 or microphone 117) for determining vibration characteristics of the article (egg 1). However, Schouenborg does not specifically suggest or disclose a hammer having a handle and while the hinge element and the handle end form a hammer rod in one piece. Note that Schouenborg discloses the tube 106 which forms an air chamber, is closed at the upper side by a transducer in the form of a microphone 117 and on the other side by a membrane 133, to which a ball 134 has been fixed. Bliss shows in Fig. 1 a hammer 1 having a head 2, a hub 3 pivoted on the center pin 4 for limited motion, see also: col. 2, lines 8-14. It would have been obvious to one having ordinary skill in the art at the time of the invention to be motivated to substitute the hammer of Schouenborg for that of Bliss because it would perform the dropping or striking or the exciting of the egg in order for the electronic device to determine the elastic characteristic of the eggs in a well known manner.

Regarding claim 2, Schouenborg in view of Bliss shows in Fig. 1 shows a motor 4 can be made to revolve in the same direction so that an egg 1 placed onto the rollers is made to rotate mainly around its own longitudinal axis of symmetry 5, see: col. 5, lines 9-14.

Regarding claim 3, Schouenborg and Bliss shows a microphone 17 in Fig. 2.

Regarding claim 4, Schouenborg in view of Bliss

Regarding claim 10, as discussed above, it is rejected for the reasons set forth for claim 1.

Regarding claim 11, Schouenborg discloses at the initial impact of the glass tube against the egg, an elastic deformation of the egg shell appears, see: col. 6, lines 1-3.

Regarding claim 12, Schouenborg shows in Fig. 1 a sorting mechanism 24.

Regarding claim 13, Schouenborg in view of Bliss discloses the measurement is carried on the circumference of the egg, whereby the glass tubes 6 are depressed each time to strike the surface of the rotating egg, only to bounce off again, see: col. 6, lines 33-37.

4. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schouenborg (US Patent 5,131,274) in view of Bliss (US Patent 3,067,605) and further in view of Egli (US Patent 5,760,691).

Regarding claim 8, Schouenborg and Bliss does not specifically disclose a bistable switch. Egli discloses a bistable switching circuit 12, see: col. 4, line 60. It would have been obvious to one having ordinary skill in the art at the time of the invention to utilize in the above combination the bistable switch of Egli because the switching circuit switches from its state at the time into the other bistable state thereby performing the switching in a reliable manner.

***Allowable Subject Matter***

5. Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Johnston et al. (US Patent 5,426,977) discloses a method for establishing the presence of salmonella bacteria in eggs.

Rosenblum et al. (US Patent 6,089,079) discloses a moisture sensor for ore concentrates and other particulate materials.

Coucke et al. (US Patent 5,696,325) discloses an apparatus for testing eggs.

Moayeri (US Patent 5,728,939) discloses a probe, device and method for testing eggs.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques M Saint-Surin whose telephone number is (703) 308-3698. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0956.



Jacques M. Saint-Surin  
June 5, 2003



HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800